

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

SHANE GERKE Plaintiff,  v.  21 <sup>st</sup> MORTGAGE CORPORATION Defendant.	Case No. Hon. <b><u>COMPLAINT AND JURY DEMAND</u></b>
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**COMPLAINT AND JURY DEMAND**

*Shane Gerke states the following claims for relief:*

**JURISDICTION**

1. Jurisdiction of this Court arises pursuant to 47 U.S.C. § 227 (b)(3).
2. This action arises out of Defendants' violations of the Telephone Consumer Protection Act ("TCPA").
3. Venue is proper in this Court because the acts and transactions occurred in South Rockwood, Monroe County, Michigan ("here"), plaintiff resides here, and defendant transacts business here.

**PARTIES**

4. The plaintiff to this lawsuit is Shane Gerke who resides in South Rockwood, Monroe County, Michigan.
5. The defendant to this lawsuit is 21<sup>st</sup> Mortgage Corporation, a Delaware corporation headquartered in Tennessee that underwrites, originates, and services mortgage loans.

**FACTUAL ALLEGATIONS**

6. Plaintiff has a telephone number (810-348-5192) that is assigned to a cellular telephone service.
7. In 2006, plaintiff obtained a second mortgage in 2006 through GMAC for a house that his family lives in.
8. Sometime after that date, GMAC assigned or transferred the mortgage or the servicing rights to the mortgage to defendant.
9. On August 16, 2010, plaintiff filed Chapter 7 Bankruptcy in the Eastern District of Michigan Federal Bankruptcy Court in Flint, Michigan 10-34467-dof.
10. Plaintiff did not reaffirm the second mortgage debt.
11. Plaintiff received a discharge of all debts on November 17, 2010.
12. Subsequent to discharge, defendant called plaintiff's cell phone using an automated telephone dialing system from 1-865-292-2120.
13. When defendant made calls to 810-348-5192, it was intending to reach defendant and was intending to collect, assess or recover a claim against plaintiff.
14. When plaintiff answered the call there was a pause and then a person came onto the line.
15. Subsequent to the filing of the bankruptcy, the prior express consent previously given was nullified by operation of law.
16. When a bankruptcy is filed, a form (B9A) is sent automatically by the Bankruptcy Noticing Center in Herndon Virginia that lists examples of prohibited actions that, "include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor;

repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages."

17. 11 U.S.C. § 362(a)(6) states that a petition.....operates as a stay, applicable to all entities of – any act to collect, assess or recover a claim against the debtor that arose before the commencement of the case.

*Defendant's willful and/or knowing acts under the TCPA*

18. Defendant made over 100 calls to plaintiff including (but not limited to) those listed below:

Date	Time
March 13, 2014	unknown
March 14, 2014	4:03pm
March 17, 2014	unknown
March 18, 2014	unknown
March 19, 2014	unknown
March 20, 2014	unknown
March 21, 2014	9:32am
March 24, 2014	3:22pm
March 25, 2014	11:25am
March 26, 2014	10:32am
April 10, 2014	3:46pm
April 11, 2014	3:20pm
April 14, 2014	6:11pm
April 15, 2014	1:00pm
April 16, 2014	3:29pm
April 17, 2014	1:42pm
April 18, 2014	10:05am
April 21, 2014	3:10pm
April 22, 2014	1:01pm
April 23, 2014	10:45am
April 24, 2014	10:15am
April 25, 2014	12:50pm
April 26, 2014	10:26am
April 28, 2014	11:39am
April 28, 2014	3:13pm
May 15, 2014	12:27pm
May 16, 2014	7:01pm
May 19, 2014	6:19pm
May 20, 2014	5:45pm

May 21, 2014	7:54pm
May 22, 2014	7:42pm
May 23, 2014	3:11pm

19. Plaintiff seeks damages for each and every call to his cell phone, not simply those in which plaintiff has evidence of receipt. Defendants outgoing call records will establish the calls made by defendant.

**CAUSES OF ACTION**  
**COUNT I**  
**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**  
**U.S.C. § 227 (b)(3)(B)**

20. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully stated herein.
21. On information and belief, defendant used an automatic telephone dialing system as defined by 47 USC § 227 (a)(1) when it made each and every call to plaintiffs cell phone in the last four years.
22. Defendant left prerecorded messages when it called plaintiff.
23. Defendant did not have plaintiff's prior express permission prior to call his cell phone number after the date of the filing of the bankruptcy petition.
24. Defendants calls to plaintiff were made because it was attempting to collect a debt.
25. Defendants intended to call plaintiff when it made calls to his cell phone number.
26. Defendant made the calls to plaintiff willfully.
27. Defendant made the calls to plaintiff knowingly.
28. Defendant's acts in making the calls to plaintiff were not accidental.
29. Plaintiff has been damaged by the above acts.

**COUNT III**

**INJUNCTIVE RELIEF**  
**U.S.C. §227(b)(3)(A)**

30. Plaintiff incorporates by reference each and every allegation within this Complaint.
31. Plaintiff requests that this Court grant it injunctive relief preventing defendant, agents, employees, representatives or defendant's successors and assigns from taking any acts that violate the Telephone Consumer Protection Act.

**JURY DEMAND**

Plaintiff demands a trial by jury.

**COUNT I**  
**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**  
**47 U.S.C. §227(b)(3)**

- damages pursuant to 47 U.S.C. § 227 (b)(3)(B) for each and every call in the amount of \$1,500 for each such act that this Court finds were made willfully or were made knowingly; o
- \$500 for each and every call made that this court deems not to have been made willfully or not have been made knowingly.
- such other relief as the Court may deem just and proper.

**COUNT II**  
**INJUNCTIVE RELIEF**  
**U.S.C. §227(b)(3)(A)**

- for an order enjoining defendant from committing any act that would violate any provision of the TCPA.

Respectfully submitted,

Dated: July 23, 2014

*Andrew L. Campbell*  

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